

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

JOSEPH R. BATTLE
Respondent

Case Nos.: I-00-70307
I-00-70339

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 - 2-1802.05, and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-70307) served by mail on August 7, 2001, the Government charged Respondent Joseph R. Battle with a violation of 21 DCMR 700.3, for allegedly failing to properly store and containerize solid wastes (the “Regulation”).¹ The Notice of Infraction alleged that Respondent violated the Regulation on August 4, 2001, at 1431-1433 11th Street N.W., and sought a \$1,000 fine.

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D. C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on September 7, 2001, this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$1000², and directing the Government to serve a second Notice of Infraction.³

The Government served the second Notice of Infraction (00-70339) by mail on September 14, 2001. On October 4, 2001, Respondent filed a plea of Admit With Explanation.⁴ Respondent raised the following matters and circumstances in support of his request for the suspension or reduction of the fine and statutory penalty:

1. He has owned the subject property since 1996. He is attempting to obtain financing to renovate it.⁵
2. Beginning in or about June 1998, unauthorized third parties began dumping trash on the property and on two occasions he had to engage a trash hauler to clean up the property. In an attempt to try to stop the unauthorized dumping, he did the following: (a) he parked a vehicle on the property to “indicate constant activity”; and (b) in or around July 1999 he had a six-foot security fence installed around the property.

² D.C. Official Code § 2-1801.04(a)(2)(A) provides that a respondent who fails to answer a notice of infraction timely may be assessed a penalty equal to the amount of the civil fine for each infraction.

³ D.C. Official Code § 2-1802.02(f).

⁴ D.C. Official Code § 2-1802.02(a)(2) provides that a respondent may Admit the infraction with an explanation which may be taken into account in the imposition of a sanction for the infraction.

⁵ Respondent has not furnished a description of the property, nor has he disclosed whether it is occupied.

3. In May 2000 his wife began experiencing severe health problems, resulting in her having several surgical operations, followed by a protracted recovery period of about fourteen months. During this time, he was his wife's primary caregiver, and he did not have the time to personally do the required clean up or the maintenance of the property.
4. When the first Notice of Infraction was served on August 9, 2000, this prompted him to start cleaning up the property.
5. He did not answer the first Notice of Infraction because he lost it and he was unaware of the deadline for filing an answer.
6. On or about September 14, 2001, he received the second Notice of Infraction, which prompted him to complete the clean up of the property. At the same time he had some repairs made to the security fence.
7. He accepts responsibility for the conditions on the property at the time of the violation and he represents that he will see to it that the property is properly maintained in the future.

The Government was permitted to reply to Respondent's request for suspension or reduction of the fine and statutory penalty. The Government states that it does not object to a reduction of the fine and statutory penalty, citing the hardship that Respondent experienced in dealing with his wife's poor health.

II. Findings of Fact

1. By his plea of Admit With Explanation, Respondent has admitted that he violated the Regulation as charged in the Notice of Infraction.
2. Respondent's plea was not timely filed.
3. Respondent has accepted responsibility for his unlawful conduct.
4. Respondent has taken steps to ensure future compliance with the Regulation.
5. There is no evidence in the record of a history of non-compliance by Respondent.
6. Respondent has not provided a sufficient explanation for his failure to timely respond to the Notice of Infraction.

III. Conclusions of Law

By his plea of Admit With Explanation, Respondent admits that he violated the Regulation, as charged in the Notice of Infraction. A fine of \$1,000 is provided for a first offense of the Regulation. 16 DCMR §§ 3201.1 (a)(1) and 3216.1 (b).

Respondent has requested the suspension or the reduction of the fine and statutory penalty. Under the circumstances, a reduction, but not a suspension, of the fine is appropriate. Despite the fact that Respondent may not have been able to personally do the work necessary to comply with the law by keeping his property free of trash because of his wife's medical problems, he has failed to explain why he did not take reasonable steps to engage some other person or entity to do the necessary clean up work. Respondent does not represent that he was unable to do this, or that he couldn't afford to do this. In fact, Respondent admits that he

previously did exactly that to remove trash dumped by others. Instead, Respondent allowed the violation to persist for almost two months.

Nevertheless, Respondent has accepted responsibility for the violation and has taken steps to ensure compliance with the Regulation in the future. Also, there is no evidence in the record of a history of non-compliance. Accordingly, I will reduce the fine to five hundred dollars. D.C. Official Code § 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G § 3E1.1.

Regarding the statutory penalty, the Civil Infractions Act requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within the time allowed by the statute. If there is a failure to answer and good cause is not shown, the statute requires that a penalty equal to the amount of the fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02.02(f).

Respondent has failed to present any evidence to show good cause for his failure to answer the Notice of Infraction timely. He simply states that he lost the Notice of Infraction and that he was unaware of the “expiration date”. Such an explanation does not constitute good cause, and it is unreasonable in light of the clear warning on the Notice of Infraction, which provides in relevant part:

WARNING; Failure to answer...each infraction on this Notice within 15 days of service will resulting assessment of a penalty equal to and in addition to the specified amount of the fine

Since Respondent has not shown good cause for his failure to answer the Notice of Infraction timely, this administrative court cannot suspend or reduce the statutory penalty. Accordingly, the statutory penalty of \$1,000 will be imposed.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this _____ day of _____, 2002:

ORDERED, that Respondent Joseph R. Battle shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount within twenty (20) calendar days of the date of mailing of this Order, by law, interest will accrue on the unpaid amount at the rate of 1 ½% per month, or portion thereof, beginning with the date of this Order. D.C. Official Code § 2-1803(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real or personal owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/16/02**

Robert E. Sharkey
Administrative Judge